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Case 7346

#11
Bui
1/15/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :
Melissa D. Aquino, et al. : Confirmation No. 9666
Serial No: 09/831,782 : Group Art Unit 3727²⁸
Filed: May 14, 2001 : Examiner L. K. Bui
For: Odor-Neutralizing and Liquid-Absorbing Trash Bags

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APPELLANT'S BRIEF

Dear Sir:

This is Appellant's Brief relating to an appeal from the March 18, 2003, Final Rejection in the above-identified Application. The Notice of Appeal was deposited with a Certificate of Facsimile transmission and addressed to Commissioner for Patents, Alexandria, VA 22313-1450 on June 18, 2003, and was noted as received in the U.S. PTO on March 18, 2003.

I. Real Party in Interest

The real party in interest for the present Application S.N. 09/831,782 is The Procter & Gamble Company of Cincinnati, OH by virtue of the Assignment recorded on July 26, 2001, at Reel No. 12034, Frame 620.

II. Related Appeals and Interferences

There are no related appeals or interferences known to Appellant's undersigned legal representative, which will directly affect, or be directly affected by or have a bearing on, the Board's decision in the present appeal.

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III. Status of Claims

In the Notice of Appeal, Appellant appealed the final rejection of all pending Claims 1-10. The complete copy of the appealed Claims is set forth in the Appendix.

IV. Status of the Amendments

There has been no amendment after the final action dated March 18, 2003 in this case.

V. Summary of the Invention

The invention on appeal relates to containers for use in disposing of food wastes and scraps. The container is constructed from liquid impervious walls and includes an absorbent material to contain liquid food wastes and an odor-neutralizing composition deposited on the absorbent material (Specification, p. 1, ll. 5-8).

According to independent Claim 1, the container for use in the disposal of food wastes comprises a liquid impervious wall described on page 3, lines 30-33, and shown in Figs. 1-4 of the Specification. The container also comprises an absorbent material (p. 5, ll. 15-18) having deposited thereon an effective amount of an odor-neutralizing composition comprising cyclodextrin (p. 6, ll. 21-23), and wherein the absorbent material is placed inside the container (Figs. 1-4).

According to independent Claim 8, the invention also encompasses a container for the disposal of food wastes comprising the foregoing ingredients, but where the liquid pervious liner is positioned adjacent to the absorbent material (p. 5, ll. 29-32).

VI. Issue

Are claims 1-5 and 7-9 obvious over Caggiano (U.S. Patent No. 4,861,632) or Kannankeril (U.S. Patent No. 4,927,010) in view of Trinh, et al. (U.S. Patent No. 5,429,628)?

Appellant respectfully asserts the rejected claims are neither obvious over *Caggiano* or *Kannankeril* in view of *Trinh* nor obvious over any reference which does not enable the claimed invention.

VII. Grouping of Claims

Appellant admits that all Claims 1-10 stand or fall together.

VIII. Argument

Claims 1-5 and 7-9 are finally rejected over *Caggiano* or *Kannankeril* in view of *Trinh*. *Caggiano* teaches a laminated packaging material from which package-type containers are fabricated for storing or transporting a variety of products ranging from dry food-stuffs to electronic equipment where **maintenance of a dry environment is a requirement**, comprising an outer imperforate water impervious later, a middle layer of absorbent material and an inner perforated moisture impervious layer. (Emphasis added; *See Abstract*). The absorbent layer typically is comprised of two or three sheets, preferably consisting of sheets of paper toweling. (4:39-41). The absorbent

layer may or may not be adhesively attached to the inner surface of the outer layer of the moisture impermeable material. (4:42-44).

Caggiano does not teach depositing an effective amount of an odor-neutralizing composition upon an absorbent material or the placement of the absorbent material inside the container. *Caggiano's* arrangement is not like that of the claimed invention. *Caggiano* does not provide the benefit found in the claimed invention of depositing an odor-neutralizing compound upon an absorbent material which is disposed **inside** a container used for the disposal of food wastes.

The *Kannankeril* reference discloses a shipping bag for containers of potentially biohazardous materials wherein the bag has liquid impervious outer panels and pads within the bag to absorb any liquid should the container rupture. (See Abstract). Thus, in the event the container ruptures, persons handling such bags are protected from contact with such liquid by the combined effects of absorbing the liquid and containing the liquid within the fluid impervious outer panels of the bag. (See Abstract). A bacteriastatic agent, such as chlorine solution or common chlorine bleach, can be impregnated onto the absorbent pads. (3:26-28). The import of the bacteriastatic agent is for **neutralization of a biohazardous liquid** in the event the container ruptures, thereby adding an additional measure for safety for persons handling the bag. (3:29-32). *Kannankeril* does not teach providing an effective amount of an odor-neutralizing composition deposited upon an absorbent material for neutralizing odors emitted by food wastes disposed within the container comprising liquid impervious walls. In fact, the *Kannankeril* reference is silent with respect to providing odor-neutralizing compositions therefor.

Appellant does not broadly claim a container for use in the disposal of food wastes comprising merely an absorbent material disposed within a liquid impervious wall. Appellant claims an absorbent material having an effective amount of an odor-neutralizing composition deposited inside a container having liquid impervious walls. This provides Appellant's claimed benefit of providing an economical and disposable bag into which food wastes and scraps can be easily and conveniently placed and contained and that also absorbs liquid food wastes as well as molecules responsible for malodors. Such a disposition is not disclosed by the rejecting combinations.

Combining *Caggiano* or *Kannankeril* with *Trinh* does not produce the claimed invention. These combinations are deficient in that neither has:

1. Appellant's claimed structural limitations, nor
2. The odor-neutralizing composition disposed upon an absorbent material.

Furthermore, it is well established that, "obvious to try" is not a sufficient basis for a rejection under 35 U.S.C. §103(a). There must be a reasonable expectation of success. There is no such expectation in either of *Caggiano*, *Kannankeril*, or *Trinh*, as there is no teaching that would lead one of ordinary skill to use an odor-neutralizing composition as Appellant has claimed. See *In re Antonie*, 195 U.S.P.Q. 6 (C.C.P.A. 1977). It is settled law that the question of obviousness under 35 U.S.C. §103(a) is not what the artisan could have done, but rather what would have been obvious for such a

person to do. *See Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986). Accordingly, Appellant submits that the rejections on this basis should be reversed.

Claims 3-7 depend from Claim 1 and have all the limitations thereof. Claims 9-10 depend from Claim 8 and have the limitations thereof. Providing Claims 1 and 8 are allowed, Claims 3-7 and 9-10 are similarly allowable, even though the Office Action relies upon a third reference to reject Claims 6 and 10.

IX. Conclusion

For the foregoing reasons, the rejection of Claims 1-10 under 35 U.S.C. §103(a) are erroneous and reversal by the Board is respectfully requested. This Appellant's Brief is timely submitted. A petition for a three-month extension of time is provided herewith.

Respectfully submitted,

By 

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APPENDIX
Appealed Claims: Serial No. 09/831,782

1. (Previously Presented) A container for use in the disposal of food wastes, the container comprising:
 - a liquid impervious wall having inner and outer surfaces,
 - an absorbent material having deposited thereon an effective amount of an odor-neutralizing composition for neutralizing odors emitted by food wastes;
 - the odor-neutralizing composition comprising cyclodextrin;
 - wherein the absorbent material is inside the container.
2. (Original) A container according to claim 1 wherein the absorbent material is joined to the inner surfaces of the walls of the container.
3. (Previously Presented) A container according to claim 2 adapted to be closed and sealed.
4. (Previously Presented) A container according to claim 3 wherein the container is a flexible bag.
5. (Previously Presented) A container according to claim 1 wherein the odor-neutralizing composition further comprises an ingredient selected from a group consisting of activated charcoal, baking soda, absorbent gelling material, zeolite, silica and mixtures thereof.
6. (Previously Presented) A container according to claim 1 wherein the odor-neutralizing composition further comprises a chelant.
7. (Previously Presented) A container according to claim 1 wherein the odor-neutralizing composition further comprises an antimicrobial agent.
8. (Previously Presented) A container for the disposal of food wastes, the container comprising:
 - (a) liquid impervious walls defining an opening for receiving the food wastes, the walls having an inner and outer surface;
 - (b) an absorbent material positioned adjacent the inner surface of the liquid impervious walls and having an effective amount of an odor-neutralizing composition deposited thereon, the odor-neutralizing composition comprising cyclodextrin; and

(c) a liquid pervious liner positioned adjacent to the absorbent material.

9. (Previously Presented) A container according to claim 8 wherein the odor-neutralizing composition further comprises an antimicrobial agent.

10. (Previously Presented) A container according to claim 8 wherein the odor-neutralizing composition further comprises a chelant.